

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10348 OF 2022

Rajaram Savla Mohite
Since deceased by his L.Rs.
Smt.Parvati Rajaram Mohite

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Gautam T. Kanchanpurkar for the Petitioner.

Ms.Kavita Solunke, A.G.P. for the State.

CORAM: R. D. DHANUKA AND

M.M. SATHAYE, JJ.

DATE : 19TH DECEMBER, 2022

P.C:-

By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for writ of mandamus against the respondent nos. 3 and 4 and for a declaration that the petitioner is entitled for a residential plot and an alternate land from the benefitted zone of the Wang-Marathwadi Medium Irrigation Project. The petitioner also prayed for directions against the respondents to issue notices under section 16(2)(a) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

2. The ancestral lands and house of the petitioner were acquired by the State Authorities since the same were to be submerged under the Wang-Marathwadi Medium Irrigation Project between the period 1996-99. The Special Land Acquisition Officer acquired the said writ property and paid compensation to the petitioner on 5th March, 2001. The petitioner accepted the said compensation without any protest. On 5th July, 2022, the petitioner made an application/representation to the respondents for a land under the provisions of Maharashtra Project Affected Persons Rehabilitation Settlement Act, 1999. Since the said application is not considered by the respondents, the petitioner filed this petition.

3. Learned counsel for the petitioner invited our attention to some of the exhibits annexed to the petition including application dated 5th July 2022 and submitted that the said application under section 16(1) (a) made on 5th July, 2022 for allotment of the land is still pending. He relied upon the judgment delivered by this Court on 2nd May, 2011 in **Writ Petition No. 8385 of 2010** in case of **Ram Shankar Deshmukh & Ors. vs. State of Maharashtra & Ors.** and in companion matters and also judgment dated 7th February, 2017 delivered by the Division

Bench of this Court in ***Writ Petition No. 8988 of 2013*** in case of ***Dadabhau Pandurang Agarkar vs. State of Maharashtra & Ors.*** and companion matters. He also relied upon the judgment delivered by the Division Bench of this Court on 27th October, 2016 in ***Review Petition (St) No. 34787 of 2015 in Writ Petition No. 3758 of 2011*** in case of ***The Collector of Pune and Others vs. Sakharam Tukaram Shivekar & Anr.***

4. It is submitted by the learned counsel for the petitioner that since the petitioner has already filed an application under section 16(1)(a) of the said Act, this Court be pleased to direct the respondents to decide the said application and to allot a land under the provisions of the said Act. He submitted that the petitioner is ready and willing to deposit 65% of the compensation amount for allotment of the land even at this stage.

5. Ms. Solunke, learned A.G.P. for the State produced the Sankalan Register and submitted that the name of the petitioner is not included in the Sankalan Register. She also produced a copy of the receipt showing the acknowledgment of the compensation received by the

petitioner in the month of March 2001 without raising any protest. She submitted that the application filed by the petitioner after more than 20 years of receiving compensation unconditionally cannot seek any such relief at this stage.

6. Learned A.G.P. also placed reliance on the judgment delivered by this Court on 8th December, 2022 in ***Writ Petition No. 10346 of 2022*** in case of ***Maruti Ganu Supnekar (since deceased) through L.R. & Ors. vs. State of Maharashtra & Others.***

7. It is not in dispute that the petitioner accepted the entire compensation from the Special Land Acquisition Officer in pursuance of the notice issued under section 12(2) of the Land Acquisition Act as far back as on 5th March, 2001 without raising any objection. The petitioner did not offer deduction of 65% amount of compensation from the total compensation paid to the petitioner by the Special Land Acquisition Officer for seeking allotment of the land under the provisions of the said Act. The application for the allotment of land under section 16(1)(a) is made for the first time after more than 21 years of receiving such compensation.

8. Learned counsel for the petitioner does not dispute that the names of the petitioner is not reflected in the Sankalan Register.

9. This Court in case of *Maruti Ganu Supnekar* (supra) after considering the provisions of section 16(1) and 16(2) of the said Act and the judgment of this Court in case of *Dadabhau Pandurang Agarkar* (supra) has held that the notice under Section 16(2) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, could not have been issued unless an application under Section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 was made by the petitioner.

10. This Court further held that stage for issuance of notice under Section 16(2) of the Act, to deposit the amount would arise only if the application under Section 16(1) of the Act is made by an eligible affected person who has a desire to get land or plot or both in the area shown for the purpose in the scheme published under Section 15 of Maharashtra Project Affected Persons Rehabilitation Act, 1999. There is no automatic entitlement of the land or plot under the said Scheme.

11. Insofar as judgment of this Court in case of ***Ram Shankar Deshmukh & Ors.*** (supra) relied upon by the learned counsel for the petitioner is concerned, this Court in the said judgment did not consider section 16(1)(a) of the said Act. Insofar as judgment of this Court in case of ***Dadabhau Pandurang Agarkar*** (supra) relied upon by the petitioner is concerned, this Court has already distinguished the said judgment in case of ***Maruti Ganu Supnekar (since deceased) through L.R. & Ors.*** (supra). The judgment of this Court in case of ***Late Vitthal Jijaba Minde (through legal heir – Namdev Vitthal Minde vs. The Deputy Collector Rehabilitation, Pune & Ors.*** in ***Writ Petition No. 11002 of 2019*** with companion matters dated 5th November, 2019 is also distinguishable on the facts on the ground that this Court did not consider the effect of section 16(1)(a) of the said Act in the said judgment.

12. Insofar as judgment of this Court in case of ***The Collector of Pune and Others*** (supra) in ***Review Petition (St) No. 34787 of 2015*** in ***Writ Petition No. 3758 of 2011*** relied upon by the learned counsel for the petitioner is concerned, a perusal of the said judgment clearly

indicates that in the affidavit in reply filed by the State Government in the said judgment, the State Government had made a categorical statement that the State Government would not insist on the alleged project affected persons producing evidence of making an Application under sub-section (1) of section 16 of the said Act.

13. In paragraph (9) of the said judgment, this Court accordingly recorded that there is already a concession made by the State Government that it will not insist on production of the proof of the fact that the respondents/petitioner or similarly placed persons have applied under section (1) of section 16 of the said Act.

14. In view of the conclusions made by the State in the said review petition, this Court directed the Deputy Collector (Resettlement), Pune to examine the case of the Petitioners/Respondents herein with a view to ascertain whether they are project affected persons as claimed by them and whether they are entitled to allotment of lands under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 or under similar enactments or not. In our view, the said judgment delivered by this Court in case of ***The Collector of Pune***

(supra) was based on the concessional statement made by the State Government and would not act as a precedent in this matter. Be that as it may, this Court did not decide the issue whether application under section 16(1) (a) was a condition precedent for notice for deposit to be issued by the Collector for making payment for 65% of the compensation.

15. Though in this case, the petitioner has made an application under section 16(1)(a) now after 21 years, we do not expect the State Government to reserve a plot of land under the scheme formulated by the State Government under section 15 of the said Act after 21 years. We are thus not inclined to direct the State Government to consider the said application made after expiry of 21 years at this stage.

16. Writ petition is thoroughly misconceived and is accordingly dismissed. No order as to costs.

[M. M. SATHAYE, J.]

[R. D. DHANUKA, J.]